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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1067

REGENCY ELECTRONICS, INC., *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD and INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF RESPONDENT INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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The International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC (herein the "Union"), whose certification by the National Labor Relations Board was sustained by the court below, opposes the granting of a writ of certiorari in this case.

QUESTIONS PRESENTED

1. Whether the Board properly found that the sample ballot circulated by the employer warranted the setting aside of the first representation election.

2. Whether the Board properly found that the Union's waiver of initiation fees did not warrant the setting aside of the second representation election.

STATEMENT

An election conducted by the Board on December 17, 1971, hereinafter called the first election, was set aside by the Board and a new election was ordered because of misconduct of the employer in distributing to employees prior to the election a sample ballot which reasonably led employees to believe that the government was urging them to vote against the Union (App. 3-4, 19, 42, 56-60).

A second election was conducted by the Board on March 24, 1972 and resulted in certification of the Union (App. 36-38), followed by unfair labor practice proceedings against the employer, and the order to bargain (App. 39-50) which, in earlier proceedings before the court below, hereinafter called *Regency I,* was enforced (App. 53-62). After this Court's decision in *N.L.R.B.* v. *Savair Mfg. Co.,* 414 U.S. 270 (1973), the court below granted rehearing, stayed further proceedings before the court, and remanded this case to the Board for the purpose of conducting a hearing on the employers' objection to the second election which related to waiver of initiation fees, with directions to the Board to certify to the court its findings and conclusions as determined upon the hearing (App 64-65).

The Board thereupon conducted the hearing as directed and issued a supplemental decision (App. 66-80)

overruling the employer's objection to the second election and reaffirming its order to the employer to bargain with the Union (App. 80-81). The Board found that the Union had an established policy, and so informed all employees, that initiation fees were waived for all employees working at the time of the election, whether or not they signed membership cards or otherwise joined the Union (App. 77-78). The Board accordingly determined that "the totality of the Union's conduct in this instance did not result in the type of waiver found objectionable by the Court in *Savair*" (App. 83, fn. 2).

The court below, in proceedings hereafter called *Regency II,* reviewed the Board's supplemental decision and enforced the Board's order (App. 84-92).

REASONS FOR GRANTING THE WRIT

1. The petition does not present any questions deserving of review by this Court. The opinion below correctly interprets and applies this Court's decision in *N.L.R.B.* v. *Savair Mfg. Co.,* 414 U.S. 270 (1973). There this Court ruled that "permitting the union to offer to waive an initiation fee for those employees signing . . . [up] prior to the election . . . allows the union to buy endorsements and paint a false portrait of employee support . . ." 414 U.S. at 277. This Court recognized, however, that a union has a "legitimate" interest in waiving its usual initiaton fee where such waivers are "available not only to those who have signed up with the union before an election but also to those who join after the election." *Id.* at 274, fn.4.

In this case, the Union's established and communicated policy (App. 70, 75-76 at fn. 7) exempted all employees from the payment of initiation fees irrespective

of when they signed a card or otherwise attained membership status (App. 70). During the second election, anti-union employees falsely propagandized the issue of initiation fee payment to secure a "No" vote (App. 72-73). In refutation and clarification of any possible ambiguity concerning its policy of waiving initiation fees, the Union mailed to all employees who appeared on the "Excelsior List" the folowing statement:

> Q. WILL I HAVE TO PAY AN INITIATION FEE IF THE UNION IS VOTED IN?
>
> A. ABSOLUTELY NOT! ANYONE PRESENTLY WORKING AT REGENCY IS HEREBY GUARANTEED THAT THEY WILL NOT PAY ANY INITIATION FEE. (App. 77, 87-88)

2. There is no conflict in the circuits about a union's right to waive initiation fees for all employees who join before and after an election. The decision below is fully consistent with every other decision that has issued since *Savair*. In all cases where no impropriety was found, the announcement of the union, like that here, informed the employees that the waiver *would apply to all*. See *N.L.R.B.* v. *Wabash Transformer Corp.*, 509 F.2d 647, 649-650 (C.A. 8), certiorari denied, No. 74-1381, October 6, 1975; *N.L.R.B.* v. *S & S Product Engineering Services, Inc.*, 513 F.2d 1311, 1313 (C.A. 6, 1975); *Altman Camera Co., Inc.* v. *N.L.R.B.*, 511 F.2d 319, 321-322 (C.A. 7, 1975); *N.L.R.B.* v. *Con-Pac, Inc.*, 509 F.2d 270, 272-273 (C.A. 5, 1975); *Thrift Drug* v. *N.L.R.B.*, 521 F.2d 243, 244 (C.A. 5, 1975); *N.L.R.B.* v. *Dunkirk Motor Inn*, 90 LRRM 2961, 2962 (C.A. 2, November 17, 1975); *N.L.R.B.* v. *Benner Glass Company*, 514 F.2d 641, 642 (C.A. 5, 1975); cf. *N.L.R.B.* v. *Stone & Thomas*, 502 F.2d 957, 958 (C.A. 4, 1974).

In this case the Union made an unqualified promise to waive initiation fees for all employees, including those who declined to join the Union until after the election. This even-handed Union conduct is certainly not the sort of pressure tactic that *Savair* meant to discourage. See *N.L.R.B.* v. *Bancroft Manufacturing Company, Inc.*, 516 F.2d 436, 444 (C.A. 5, 1975).

3. The approval by the court below of the action of the Board in setting aside the first election, likewise, presents no issue worthy of consideration here. The Board's ban on the use by any party of marked copies of the Board's sample ballot is of long standing and well publicized. This case presents no aspect of this issue which is new or important.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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